



Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

P.O. Box 2317 (1019 Pacific Ave-3rd Fl) • Tacoma WA 98401-2317

March 23, 2006

Chuck Cross
Director, Consumer Services Division
Department of Financial Institutions
P.O. Box 41200
Tumwater, Washington 98504-1200

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MAR 24 2006

CONSUMER SERVICES DIVISION
FINANCIAL INSTITUTIONS
OLYMPIA, WASHINGTON

Re: **State of Washington v. ACC Capital Holdings Corporation, et al.**

Dear Mr. Cross:

Enclosed for your records is a conformed copy of the Complaint and Consent Judgment in the above matter which was filed with the Washington State King County Superior Court on March 21, 2006.

Sincerely,

DAVID W. HUEY
Assistant Attorney General
Consumer Protection Division
(253) 593-5057

DWH:bn
Enclosures: (2)
cc: Scott Jarvis (w/o enc.)

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MAR 24 2006

DEPT. OF FINANCIAL INSTITUTIONS
OLYMPIA, WASHINGTON

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FILED 19.01.1443

RECEIVED 19.01.1443
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,

Plaintiff,

v.

ACC CAPITAL HOLDINGS
CORPORATION, a Delaware corporation;
AMERIQUEST MORTGAGE
COMPANY, a Delaware corporation;
TOWN & COUNTRY CREDIT
CORPORATION, a Delaware corporation;
and AMC MORTGAGE SERVICES,
INC. f/k/a BEDFORD HOME LOANS, a
Delaware corporation,

Defendants.

NO. 06-2-09702-5 SEA

COMPLAINT FOR INJUNCTIVE
AND OTHER RELIEF PURSUANT
TO CHAPTER 19.86 RCW

Plaintiff, State of Washington, acting by and through its Attorney General and its Commissioner of Financial Institutions (collectively, "the State"), brings this action pursuant to the provisions of Chapter 19.86 RCW, the Washington Consumer Protection Act and Chapter 31.04 RCW, the Washington Consumer Loan Act. Plaintiff seeks, among other things: a permanent injunction, an order compelling Defendants to pay restitution to Borrowers, civil penalties, and attorneys' fees and costs.

JURISDICTION AND PARTIES

1. The Court has jurisdiction over the parties and the subject matter under RCW

1 19.86.080 and RCW 31.04.205 because Defendants committed the acts alleged below in the State
2 of Washington. Venue is proper under RCW 4.12.025 because the violations of law alleged
3 occurred, in part, in King County, Washington.

4 2. Defendant, Ameriquist Mortgage Company ("AMQ"), is a Delaware
5 corporation with its principal place of business located at 1100 Town and Country Road, Suite
6 450, Orange, California, which at all times relevant to this Complaint has transacted business
7 within and throughout the State of Washington and engaged in the retail based origination and
8 funding of real estate secured, owner-occupied, residential mortgage loans. It is licensed in
9 Washington as a consumer loan licensee by the Washington Department of Financial
10 Institutions.
11

12 3. Defendant, AMC Mortgage Services, Inc. f/k/a Bedford Home Loans ("AMC"),
13 is a Delaware corporation with its principal place of business located at 505 City Parkway
14 West, Suite 100, Orange, California, which at all times relevant to this Complaint has
15 transacted business within and throughout the State of Washington and engaged in the retail
16 based origination and funding of real estate secured, owner-occupied, residential mortgage
17 loans. It is licensed in Washington as a consumer loan licensee by the Washington Department
18 of Financial Institutions.
19

20 4. Defendant, Town & Country Credit Corporation ("TCCC"), is a Delaware
21 corporation, with its principal place of business located at 2010 Main Street, Suite 800, Irvine,
22 California, which at all times relevant to this Complaint has transacted business within and
23 throughout the State of Washington and engaged in the retail based origination and funding of
24 real estate secured, owner-occupied, residential mortgage loans. It is licensed in Washington
25
26

1 as a consumer loan licensee by the Washington Department of Financial Institutions.

2 5. Defendant, ACC Capital Holdings Corporation ("ACCCH"), is a Delaware
3 corporation, with its principal place of business located at 1100 Town and Country Road,
4 Orange, California, whose subsidiaries AMQ, TCCC and AMC were, at all times relevant to
5 this Complaint, engaged in the retail based origination and funding of real estate secured,
6 owner-occupied, residential mortgage loans in Washington State and elsewhere.

7
8 6. Whenever reference is made in this Complaint to any act or practice of a
9 Defendant, such allegation shall be deemed to mean that the principals, officers, directors,
10 employees, agents or representatives of that Defendant did, or authorized, such act or practice
11 on behalf of that Defendant, while actively engaged in the performance of their duties within
12 the scope of their employment.

13
14 7. Whenever reference is made in this Complaint to any act of Defendants, such
15 allegation shall be deemed to mean the act of each Defendant acting individually and jointly.

16 GENERAL ALLEGATIONS

17 8. In the ordinary course of business, Defendants AMQ, TCCC, and AMC, retail
18 lending subsidiaries of Defendant ACC Capital Holding Corporation, have offered, negotiated
19 and entered into real-estate secured, owner-occupied, residential mortgage loans with
20 borrowers in the State of Washington. These real estate secured loans were made from or at
21 retail lending branches during the period January 1, 1999 through December 31, 2005 (the
22 "Covered Transactions").

23
24 9. State attorneys general and state financial regulators in this state and in other
25 states have received and investigated complaints and conducted examinations concerning the
26

1 Covered Transactions. Those complaints and investigations related to the Amerquest Parties'
2 conduct with respect to the following practices:

3 A. Discount Points: Plaintiff alleges the Amerquest Parties engaged in
4 unfair or deceptive acts or practices by failing to provide timely and adequate
5 information to borrowers concerning the amount and purpose of "discount" points and
6 other fees imposed on their loans. Further, Plaintiff alleges the Amerquest Parties
7 failed to provide some or all of the borrowers who paid "discount" points with a
8 commensurate discount in the interest rate charged on the loan.
9

10 B. Misrepresentation of Loan Costs and Terms: Plaintiff alleges the
11 Amerquest Parties engaged in unfair or deceptive acts or practices by making
12 deceptive representations or omissions regarding loan terms and charges including:
13 failing to disclose the contract interest rate of the loan and training sales personnel to
14 avoid disclosing the contract interest rate when asked to do so by consumers; falsely
15 promising consumers "the best-possible rate available"; misrepresenting the presence
16 or the mechanics of the adjustable rate feature of loans; failing to properly disclose to
17 consumers whether the proposed loan payment included an amount to be escrowed for
18 payment of real estate taxes and insurance and deceptively comparing payments with
19 escrow provisions with those without such provisions; misrepresenting the credit status
20 of consumers; and, as an inducement to enter into a loan, deceptively representing to
21 consumers the ability of a borrower to refinance the loan at a later date and the cost of
22 refinancing.
23

24 C. Prepayment Penalties: Plaintiff alleges the Amerquest Parties engaged
25
26

1 in unfair or deceptive acts or practices by misleading borrowers about the presence, the
2 significance or the effect of a prepayment penalty and the duration of the prepayment
3 penalty on a loan. Further, the Ameriquist Parties deceptively represented to some
4 borrowers the possibility the prepayment penalty might be waived by an Ameriquist
5 Party.
6

7 D. Repeat Refinancing: Plaintiff alleges that the Ameriquist Parties, in
8 violation of their own published Best Practices, engaged in the unfair or deceptive act
9 or practice of soliciting existing Ameriquist Party borrowers to refinance within the
10 first twenty-four (24) months of their loan term thereby causing some borrowers to
11 incur a prepayment penalty.
12

13 E. Inflated Appraisals: Plaintiff alleges the Ameriquist Parties engaged in
14 deceptive or misleading acts or practices by pressuring appraisers and providing them
15 with explicit and implicit monetary incentives to inflate real estate appraisals in excess
16 of the market value of residences serving as security for loans to borrowers. Plaintiff
17 further alleges this practice limited the ability of borrowers to refinance their loans and
18 forced some to sell their homes at a loss.
19

20 F. Inflated Income: Plaintiff alleges the Ameriquist Parties engaged in
21 unfair or deceptive acts and practices by fabricating or inflating income and asset
22 information for consumers in connection with loan applications or encouraging
23 consumers to do so.
24

25 G. Disparaging Federal Disclosures: Plaintiff alleges the Ameriquist
26 Parties engaged in unfair or deceptive acts or practices by disparaging the accuracy or

1 relevance of written disclosures required by federal law in the Truth-in-Lending Act,
2 the Real Estate and Settlement Procedures Act, and the regulations published
3 thereunder.

4 H. Delayed Loan Funding: Plaintiff alleges the Ameriquist Parties
5 engaged in unfair or deceptive acts or practices by failing to fully and timely fund loans
6 at the expiration of the applicable rescission period, resulting in harm to borrowers.
7

8 I. Loan Unsuitability. Plaintiff alleges the Ameriquist Parties engaged
9 in unfair or deceptive acts or practices by selling loans to consumers that were
10 unsuitable or without a net benefit to the borrower, taking into account all of the facts
11 and circumstances of the borrower and the loan.
12

13 J. Coordination with Debt Collectors. Plaintiff alleges the Ameriquist
14 Parties engaged in unfair or deceptive acts or practices by unfairly conspiring with debt
15 collectors to pressure consumers into taking out a home mortgage loan with an
16 Ameriquist Party.

17 COUNT I

18 CONSUMER PROTECTION ACT VIOLATIONS

19 10. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1
20 through 9 of this Complaint.
21

22 11. The Ameriquist Parties engage in trade or commerce within the meaning of
23 RCW 19.86.010, the Washington Consumer Protection Act, by making real-estate secured,
24 owner-occupied, residential mortgage loans to consumers within the State of Washington. The
25 Ameriquist Parties advertise, offer, solicit sales of, and sell real-estate secured loans and
26

1 related goods and services to Washington consumers.

2 12. The acts or practices alleged in this Complaint are unfair or deceptive in
3 violation of Chapter 19.86 RCW, the Washington Consumer Protection Act.

4 **COUNT II**

5 **CONSUMER LOAN ACT VIOLATIONS**

6
7 13. Plaintiff realleges and incorporates by reference the allegations of Paragraphs 1
8 through 12 of this Complaint.

9 14. The acts or practices alleged in this Complaint are violations of Chapter 31.04
10 RCW, the Washington Consumer Loan Act.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE**, Plaintiff, State of Washington, prays for judgment as follows:

13
14 A. That the Court adjudge and decree that the Amerquest Parties have engaged in
15 the conduct set forth in this Complaint.

16 B. That the Court adjudge and decree that the conduct set forth in this Complaint
17 constitutes unfair or deceptive acts or practices and unfair methods of competition in violation
18 of the Consumer Protection Act, Chapter 19.86 RCW.

19 C. That the Court adjudge and decree that by engaging in the conduct set forth in
20 this Complaint, the Amerquest Parties have, either knowingly or without the exercise of due
21 care, violated the provisions of the Consumer Loan Act, Chapter 31.04 RCW.

22
23 D. That the Court issue a permanent injunction enjoining and restraining the
24 Amerquest Parties, their direct and indirect subsidiaries, affiliates, officers, directors,
25 employees, agents, related entities, successors, and assigns, and any and all other persons who
26

1 act under, by, through, or on behalf of Defendants, from continuing or engaging in the conduct
2 set forth in this Complaint.

3 E. That the Court order Defendants to make restitution to Borrowers under RCW
4 19.86.080 and RCW 31.04.093.

5 F. That the Court assess civil penalties against the Ameriquest Parties under RCW
6 19.86.140 of Two Thousand Dollars (\$2,000) per violation for each violation of RCW
7 19.86.020 resulting from the conduct set forth in this Complaint.

8 G. That the Court assess fines against the Ameriquest Parties under RCW
9 31.04.093 of up to One Hundred Dollars (\$100.00) per day for each violation of Chapter 31.04
10 RCW set forth in this Complaint.

11 H. That the Court issue an order revoking or suspending the licenses of the
12 Ameriquest Parties for the violations of Chapter 31.04 RCW set forth in this Complaint.

13 I. That the State be awarded its attorneys' fees and costs, or other appropriate
14 recompense under RCW 19.86.080 and RCW 31.04.145.

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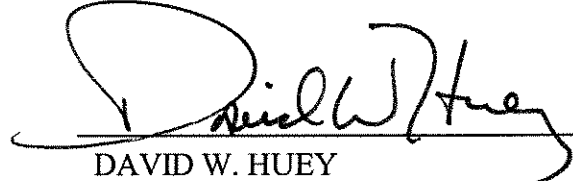
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1 J. That the Court order such other and further relief as the Court may seem just
2 and proper.

3
4 DATED this 21st day of March, 2006.

5
6 ROB MCKENNA
Attorney General

7
8 

9 DAVID W. HUEY
10 WSBA #31380
11 Assistant Attorney General
12 Attorneys for Plaintiff
13 State of Washington
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CLERK OF SUPERIOR COURT
SEATTLE, WA

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

STATE OF WASHINGTON,

Plaintiff,

v.

ACC CAPITAL HOLDINGS
CORPORATION, a Delaware corporation;
AMERIQUEST MORTGAGE
COMPANY, a Delaware corporation;
TOWN & COUNTRY CREDIT
CORPORATION, a Delaware corporation;
and AMC MORTGAGE SERVICES,
INC. f/k/a BEDFORD HOME LOANS, a
Delaware corporation,

Defendants.

NO. **06-2-09702-5** CDA

CONSENT JUDGMENT

(CLERK'S ACTION REQUIRED)

I. JUDGMENT SUMMARY

Judgment Creditor:

State of Washington

Judgment Debtors:

ACC Capital Holdings Corporation, Ameriquest
Mortgage Company, Town & Country Credit
Corporation, and AMC Mortgage Services, Inc.
f/k/a Bedford Home Loans

Principal Judgment Amount:

\$6,469,674.56 plus certain additional amounts
for settlement administration and compliance
monitoring. See Sections VI and VII

Total Judgment

\$8,969,674.56 plus certain additional amounts identified above.

Post Judgment Interest Rate

The higher of 12% per annum or 4 percentage points above average bill rate for 26-week T-Bills.

Attorneys for Judgment Debtors:

GEOFFREY M. DAVIS, WSBA #25366
Kirkpatrick & Lockhart Nicholson Graham, LLP
Four Embarcadero Center, 10th Floor
San Francisco, CA 94111
Tel: (415) 249-1000
Fax: (415) 249-1001

Attorneys for Judgment Creditor:

Office of the Attorney General
David W. Huey
Assistant Attorney General.

It appearing to this Court that Plaintiff, State of Washington, acting by and through its Attorney General and its Director of Financial Institutions (collectively, "the State") and Defendants ACC Capital Holdings Corporation ("ACCCH"), and its subsidiaries Ameriquest Mortgage Company ("AMQ"), Town & Country Credit Corporation ("TCCC"), and AMC Mortgage Services, Inc. f/k/a Bedford Home Loans ("AMC"), on behalf of themselves and their successors, assigns, predecessors, and any future acquired or created corporations or other business entities of ACCCH, AMQ, TCCC or AMC, engaged in the Retail Based origination and funding of real estate secured, owner-occupied, residential mortgage loans, have resolved the matters in controversy between them and have consented to the terms of this Consent Judgment as follows:

II. DEFINITIONS

For purposes of this Consent Judgment, the following Definitions apply (capitalized terms used in a definition are themselves defined below):

1 A. “Adjustable Rate Mortgage” means a Loan that has “a variable rate feature” as
2 used in 12 C.F.R. § 226.18(f).

3 B. “Amerquest Party(ies)” means, as the context requires, any ACCCH subsidiary,
4 including those acquired or formed in the future, involved in the Retail Based origination and
5 funding of real estate secured, owner-occupied, residential mortgage loans, and also including
6 its current Retail Based real estate lending subsidiaries AMQ, AMC and TCCC, and the
7 respective successors and assigns and all the respective employees, officers and directors
8 (solely in their respective official capacities during the term of their employment or
9 directorship and not in their individual capacities) of these subsidiaries. This term does not
10 include ACCCH or any subsidiaries that are not involved in the Retail Based origination and
11 funding of real estate secured, owner-occupied, residential mortgage loans.
12

13 C. “Annual Percentage Rate” or “APR” means the measure of the cost of credit
14 expressed as a yearly rate, calculated according to the provisions of TILA.
15

16 D. “Appraisal” means a written or electronic analysis by an appraiser licensed or
17 certified under the laws or regulations of the state of Washington or any political subdivision
18 of the state of Washington to conduct Appraisals of the value or worth of a single-family or 1-4
19 unit residential property proposed to serve as collateral for a Loan. The term does not include
20 reports that estimate the value of residential property by means of an Automated Valuation
21 Model or AVM.
22

23 E. “Appraisal Department” means that department of an Amerquest Party housing
24 employees with responsibility for ordering and reviewing appraisals, which is located at the
25 regional or headquarters office of the Amerquest Party. It includes members of the Appraisal
26

1 and Business Control Groups but does not include any employees who are Sales Personnel.

2 F. "Borrower" means an individual who has consummated a Loan with an
3 Ameriquest Party.

4 G. "Closing" means the process during which a Borrower executes a note and
5 security instrument regarding a lien on real property in connection with a Loan. In some
6 Settling States a Closing is referred to as a "settlement" and in others as an "escrow."

7 H. "Covered Transactions" means any Loans originated by any Ameriquest Party
8 during the period January 1, 1999 through and including December 31, 2005.

9 I. "Debt Collector" means a person or entity who is a debt collector as that term is
10 defined at 15 U.S.C. § 1692a (6), or a collection agency as that term is defined at RCW
11 19.16.100.

12 J. "Discount Points" means fees or charges paid by the Borrower to an Ameriquest
13 Party at the time of origination of a Loan for the purpose of reducing the interest rate
14 applicable to the Loan.

15 K. "District Attorneys" means the District Attorneys of Alameda, Los Angeles,
16 Merced, Monterey, San Francisco and San Mateo Counties, California.

17 L. "Effective Date" means March 21, 2006.

18 M. "Financial Regulator" means the administrative agency or agencies within any
19 Settling State, which at any time between January 1, 1999 through and including December 31,
20 2005, exercised regulatory, licensing, examination, supervisory or other administrative
21 enforcement authority over the Ameriquest Parties with respect to any of the Covered
22 Transactions.

1 N. "Fixed Rate Mortgage" means a Loan that is not an Adjustable Rate Mortgage.

2 O. "Good Faith Estimate" and "GFE" mean an estimate of charges, prepared in
3 accordance with section 5 of RESPA, which a Borrower is likely to incur in connection with
4 the Closing of a proposed Loan.

5 P. "Independent Loan Closer" means any person who is not an employee of the
6 branch office where the Loan is originated, a spouse, parent, sibling, or child of a branch office
7 employee, or a spouse of any such person, who has no financial interest in the Loan being
8 closed other than payment of standard settlement fees and charges, and who is present at the
9 time of Closing for the purpose of procuring the Borrower's execution of documents related to
10 the Closing process.

11 Q. "Lending Practices" means any representations, misrepresentations, omissions,
12 disclosures or any other acts, events, facts, transactions, occurrences, or conduct, whether oral,
13 written or otherwise, by an Amerquest Party, including its employees or agents, arising out of,
14 in connection with, or relating to any of the following:

15 1. Loan types and terms, including Discount Points, interest rates,
16 origination-related fees, monthly payment amounts, terms of Adjustable Rate and Fixed
17 Rate Mortgages and Prepayment Penalties.

18 2. Written disclosures, including the GFE and other documents required to
19 be provided to a Potential Borrower by any law or otherwise, provided by an
20 Amerquest Party.

21 3. The Borrower benefits of obtaining a Loan from an Amerquest Party or
22 from a repeat Refinancing with an Amerquest Party.
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4. Coordination with Debt Collectors.
5. The timely completion of the Underwriting functions and funding of a Loan.
6. Closing of a Loan.
7. Appraisals.
8. Stated Income Loans.
9. Disclosures to non-English speaking Borrowers and Potential Borrowers, including but not limited to any claims set forth in the Complaint filed in the above-captioned action.

R. "Loan" means a Retail Based, real estate secured, owner-occupied, residential mortgage loan originated and funded by an Ameriquest Party.

S. "Material Change in Terms" means:

1. An increase in the interest rate of the Loan of thirty (30) basis points or more or any increase in Discount Points, other than as the result of trading Discount Points for interest rate at the affirmative request of the Borrower;
2. Any increase in the repayment term of the Loan;
3. A decrease in the Loan amount greater than one percent (1%);
4. The addition of a Prepayment Penalty; or
5. The change from a Fixed Rate Mortgage to an Adjustable Rate Mortgage.

T. "Non-Prime Loan" means a Loan for which the APR is equal to or greater than two and one-half percentage points (2.5%) for first-lien loans or five percentage points (5%)

1 for subordinate-lien loans above the Treasury yield for securities of a comparable period of
2 maturity as of the fifteenth day of the month in which the interest rate on the Loan is set.
3 Following receipt of the first Monitor's Report, due on March 31, 2007, and again upon receipt
4 of the second Monitor's Report, due on March 31, 2008, the Compliance Committee shall
5 renegotiate this provision in good faith with ACCCH and the Amerquest Parties, taking into
6 account the Amerquest Parties' record of compliance reflected in the Monitor's Reports and
7 any other relevant information.
8

9 U. "Potential Borrower" means an individual who is seeking or receiving
10 information about a Loan from an Amerquest Party Sales Person; provided, however, that
11 Potential Borrower does not include an individual who receives, but does not respond to,
12 marketing materials or information, including advertisements.
13

14 V. "Prepayment Penalty" means a fee assessed, pursuant to the terms of the Loan
15 documents, when a Borrower pays off a Loan within a designated period of time after Closing,
16 but excluding any fee or charge that may be assessed to facilitate Loan pay-off, such as a pay-
17 off fee, fax fee, reconveyance fee or other fee that is not prohibited under applicable law and
18 would be payable for the pay-off of any Loan without regard to whether the Loan documents
19 impose what generally is understood to be a Prepayment Penalty.
20

21 W. "Refinance" means to satisfy one Loan with the proceeds from a new Loan
22 obtained by the same Borrower(s), using the same property as security. A Refinance does not
23 include the matters identified in 12 C.F.R. § 226.20(a)(1)-(5).
24
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26

1 X. "RESPA" means the federal Real Estate Settlement Procedures Act of 1974, 12
2 U.S.C. § 2601 et seq., and Regulation X, promulgated pursuant thereto, 24 C.F.R. Part 3500,
3 including subsequent amendments.

4 Y. "Retail Based" means originated and funded loans by employees or independent
5 contractors acting in the name and on behalf of the lender directly to consumers. It does not
6 include other methods of originating loans using third parties, such as mortgage brokers or loan
7 correspondents.
8

9 Z. "Sales Person" or "Sales Personnel" means any employee or employees who
10 work in the AMC Portfolio Retention Department, at a branch office of any Ameriquest Party
11 or who otherwise may reasonably be foreseen to have direct communications (whether in
12 person, telephonically, or by electronic means) with Potential Borrowers for the purpose of
13 originating a Loan and those who supervise those employees, including regional and area
14 managers.
15

16 AA. "Settlement Agreement" means the Settlement Agreement between ACCCH
17 and the Ameriquest Parties on the one hand and the Settling States on the other hand, entered
18 into effective January 23, 2006.

19 BB. "Settlement Fund" means the amounts required to be paid under this Settlement
20 Agreement for consumer restitution and settlement administration.
21

22 CC. "Settling States" means the States or Commonwealths, including the District of
23 Columbia, that file fully executed Consent Judgments and, in the case of Financial Regulators,
24 either fully executed Consent Judgments or Stipulated Judgments or stipulations to
25
26

1 administrative findings resolving with ACCCH and the Ameriquest Parties the matters set forth
2 herein.

3 DD. "State Attorneys General" means the chief legal officer of each state,
4 commonwealth and the District of Columbia, except for the states of Hawaii and Georgia. For
5 Hawaii, it means the Executive Director of the Hawaii Office of Consumer Protection, an
6 agency with statutory authority to represent the State of Hawaii in Consumer Protection
7 Actions. For Georgia, it means the Administrator of the Fair Business Practices Act, who is
8 authorized by statute to enter into Settlement Agreements on behalf of the State of Georgia.
9

10 EE. "Stated Income Loan" means a Loan where a Borrower is not required to
11 provide verification or documentation to support all income listed on the Borrower's
12 application.
13

14 FF. "TILA" means the federal Truth-in-Lending Act, 15 U.S.C. § 1601 et seq., and
15 Regulation Z, promulgated pursuant thereto, 12 C.F.R. Part 226, including subsequent
16 amendments.

17 GG. "Underwriting" means the process of approving or denying a Loan based on an
18 evaluation of the applicant's creditworthiness and ability to repay the Loan and an Appraisal of
19 the market value of the residential property proposed to secure the Loan.
20

21 **III. STIPULATED RECITALS**

22 A. Plaintiff, as well as the State Attorneys General, the state Financial Regulators
23 and the District Attorneys, have received and investigated consumer complaints, and
24 conducted examinations with respect to the Lending Practices of the Ameriquest Parties and
25 acknowledges that ACCCH and the Ameriquest Parties cooperated with Plaintiff and the other
26

1 Settling States' investigations and examinations of the Lending Practices. In the interest of
2 resolving the issues raised by the complaints, investigations and examinations and to avoid the
3 risks, loss of time and costs associated with protracted litigation, the parties have voluntarily
4 entered into this Judgment.

5
6 B. This Consent Judgment shall not be interpreted as an admission of wrongdoing
7 by ACCCH or the Ameriquest Parties or as an admission, concession, or evidence of any
8 alleged fault, misrepresentation, act or omission or any other alleged violation of law, and it
9 does not represent a formal finding of wrongdoing by any court or administrative agency.

10 C. Plaintiff and Defendants hereby waive their right to move for a new trial or
11 otherwise seek to set aside the Judgment through any collateral attack, and further waive their
12 right to appeal from the Judgment, except that Plaintiff and Defendants, and each them, agree
13 that this court shall retain jurisdiction for the purposes specified in Subsection IX(H) of this
14 Consent Judgment.
15

16 **IV. PAYMENT OF RESTITUTION, ATTORNEYS' FEES, INVESTIGATION COSTS**

17 **AND OTHER EXPENSES TO THE STATES**

18 A. **Payment Obligation of ACCCH.** ACCCH is a party to this Consent Judgment
19 for the sole purpose of paying restitution and other amounts as set forth below in this Section
20 IV and in Subsections VI.C.3 and VII.E.
21

22 B. **Payment of Restitution.** ACCCH or AMQ shall pay the sum of Two Hundred
23 Ninety-Five Million Dollars (\$295,000,000) for the payment of restitution to Borrowers in the
24 Settling States, nationally, as part of the Settlement Agreement. The restitution awarded under
25
26

1 the terms of this Consent Judgment is not and shall not be considered as forgiven debt. The
2 Settlement Fund shall be divided into two sub-funds:

3 1. The sum of One Hundred Seventy-Five Million Dollars (\$175,000,000)
4 shall be used to provide restitution to Borrowers who obtained Loans from an
5 Ameriquest Party during the period of January 1, 1999 to April 1, 2003 (hereafter "Sub-
6 Fund A"). Sub-Fund A, plus any net, after tax interest income earned on that sum, shall
7 be distributed on a nationwide basis by the Settlement Administrator to certain
8 Borrowers, including certain Borrowers in the state of Washington, who received a
9 Loan from any of the Ameriquest Parties from January 1, 1999, through and including
10 April 1, 2003, according to a formula to be established by the Settling States.

11
12 2. The sum of One Hundred Twenty Million Dollars (\$120,000,000) shall
13 be used to provide restitution to Borrowers who obtained Loans from an Ameriquest
14 Party between January 1, 1999 and December 31, 2005 (hereafter "Sub-Fund B"). The
15 state of Washington's share of Sub-Fund B shall be \$2,993,874.56, plus any net, after
16 tax interest income earned on that sum. The State shall have sole discretion to
17 determine the manner in which it will distribute its share of Sub-Fund B to consumers,
18 including the criteria for choosing which Borrowers shall receive any restitution and the
19 amount of restitution each such Borrower will receive.

20
21 C. Payment to the Settling States. Within three (3) business days after the
22 Effective Date, ACCCH or AMQ shall pay, by wire transfer or as otherwise directed, the sum
23 of Thirty Million Dollars (\$30,000,000) to the Settling States for their attorneys' fees,
24 investigation costs, and other expenses related to the investigation and resolution of this matter.
25
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1 The State's share of these costs shall be Two Million Five Hundred Thousand Dollars
2 (\$2,500,000). ACCCH or AMQ shall distribute the funds being paid to the State as directed in
3 a writing signed by the undersigned assistant attorney general. The State, in its sole discretion,
4 may use all or part of this sum to fund consumer fraud education, investigation, enforcement
5 operations, litigation, public protection or local consumer aid, including contributions to
6 develop a national mortgage licensing system. The State further retains the right to use any
7 portion of its share for additional consumer restitution.
8

9 **D. Payment Schedule.** All payments to the Settlement Fund shall be by wire
10 transfer to the Settlement Administrator and deposited by the Administrator into an interest
11 bearing account. In the event the Settlement Administrator is not in place at the time any
12 payment is due, ACCCH or AMQ shall make the payment into an escrow account established
13 for that purpose with a trustee to be named by the Settling States, who shall deposit the
14 payment with the Settlement Administrator as soon as one is in place. ACCCH or AMQ shall
15 make the required payments according to the following schedule:
16

17 1. The sum of Forty-five Million Dollars (\$45,000,000) shall be paid no
18 later than three (3) business days after the Effective Date.

19 2. The sum of Sixty Million Dollars (\$60,000,000) shall be paid not later
20 than ninety (90) days after the date the first payment is due.

21 3. The sum of Sixty Million Dollars (\$60,000,000) shall be paid not later
22 than one hundred eighty (180) days after the date the first payment is due.

23 4. The sum of Sixty Million Dollars (\$60,000,000) shall be paid not later
24 than two hundred seventy (270) days after the date the first payment is due.
25
26

1 5. The sum of Seventy Million Dollars (\$70,000,000) shall be paid not
2 later than three hundred sixty five (365) days after the date the first payment is due.

3 **E. Funds to Be Held in Trust.** All monies in the Settlement Fund, including
4 interest income, shall be held in trust for the purposes stated in this Consent Judgment. Neither
5 ACCCH nor the Amerquest Parties shall have any property right, interest, claim or title to the
6 Settlement Fund or any interest earned thereon once a deposit is made into the Settlement
7 Fund.
8

9 **F. Qualified Settlement Fund.** The fund established by this Consent Judgment
10 for the payment of restitution is intended to be a Qualified Settlement Fund within the meaning
11 of Treasury Regulation Section 1.468B-1 of the U.S. Internal Revenue Code of 1986, as
12 amended.
13

14 **V. INJUNCTIVE RELIEF**

15 Pursuant to RCW 19.86.080 and RCW 31.04.165, the Amerquest Parties are enjoined
16 with respect to their origination and funding of Loans from engaging in unfair or deceptive acts
17 or practices and are further enjoined as follows:

18 **A. Scope.** The injunctive requirements set forth below are intended as a floor or
19 minimum requirements governing the conduct of the Amerquest Parties. Nothing set forth
20 herein alters the requirements of Washington or federal law to the extent those laws offer
21 greater protection to consumers.
22

23 **B. Disclosure of Loan Terms.** The Amerquest Parties shall not make false,
24 misleading or deceptive representations regarding Loan terms and shall make the following
25 disclosures to Potential Borrowers in a clear manner:
26

1 1. *Oral Disclosures.* Ameriquest Parties' Sales Personnel, whenever they
2 have obtained Non-Prime Loan pricing information from their respective pricing model
3 based on credit information provided by a Potential Borrower and that Potential
4 Borrower has in a conversation with an Ameriquest Party Sales Person agreed to the
5 submission of a specific Non-Prime Loan proposal for processing (but in no event later
6 than when an appraisal or loan documents have been ordered, whichever occurs first),
7 shall provide oral disclosures as follows:
8

9 a. *Fixed Rate Mortgage - Specific Loan Terms.* If the proposed
10 Non-Prime Loan is a Fixed Rate Mortgage, the Ameriquest Parties' Sales
11 Personnel shall provide an oral disclosure in substantially the following form:
12

13 "The loan we have been discussing is a [insert term of the loan]
14 year fixed rate loan for \$ [insert loan amount]. The interest rate
15 is [insert interest rate]%. The monthly payment is \$[insert
16 monthly payment], which does [or does not] include escrows for
17 property taxes or insurance. Your loan does [or does not]
18 include a prepayment penalty."
19

20 b. *Fixed Rate Mortgage – With Discount Points.* If the proposed
21 Non-Prime Loan includes a fixed rate mortgage and provides for the payment of
22 Discount Points, Ameriquest Parties' Sales Personnel shall provide an oral
23 disclosure in substantially the following form:
24

25 "This loan includes payment of [insert number] discount points,
26 a fee you pay at closing that reduces the interest rate on your

1 loan and also the amount of your monthly payment but increases
2 the total amount of your loan. You may be eligible for a loan
3 with fewer discount points.”

4 c. *Adjustable Rate Mortgage – Specific Loan Terms.* If the
5 proposed Non-Prime Loan includes an Adjustable Rate Mortgage, Ameriquest
6 Parties’ Sales Personnel shall provide an oral disclosure in substantially the
7 following form:
8

9 “The loan we have been discussing is an adjustable rate loan for
10 \$[insert loan amount], with an initial interest rate of [insert initial
11 interest rate]%. Your initial monthly payment would be \$[insert
12 initial monthly payment], which does [or does not] include
13 escrows for property taxes or insurance. Your loan does [or does
14 not] include a prepayment penalty.
15

16 Because this is an adjustable rate loan, the initial interest rate and
17 monthly payment I quoted you are only guaranteed for the first
18 [insert length of initial fixed rate period] of the loan. After that,
19 your interest rate can increase by up to [insert rate adjustment
20 cap] percent each year. But, your interest rate can never be
21 higher than [insert lifetime cap] percentage points over your
22 initial interest rate.”
23

24 If the Sales Person has not previously discussed a specific Fixed
25 Rate Mortgage proposal with the Potential Borrower, the Sales
26

1 Person shall also provide an additional oral statement in
2 substantially the following form:

3 "You may be eligible for a loan with an interest rate that does not
4 change."
5

6 d. *Adjustable Rate Mortgage - With Discount Points.* If the
7 proposed Non-Prime Loan includes an Adjustable Rate Mortgage and the
8 payment of Discount Points, Ameriquest Sales Personnel shall provide an oral
9 disclosure in substantially the following form:

10 "This loan includes a payment of [insert the number] discount
11 points, a \$[insert the amount of the discount points in dollars] fee
12 you will pay at closing to lower your initial interest rate and
13 monthly payment. You may be eligible to pay fewer discount
14 points, but if you do that your initial interest rate and monthly
15 payment will be higher."
16

17 e. *Prepayment Penalty.* If the proposed Non-Prime Loan includes a
18 Prepayment Penalty, Ameriquest Sales Personnel shall make an oral disclosure
19 in substantially the following form:

20 "This loan contains a prepayment penalty. That means if you
21 pay off or refinance your loan within [insert the length of the
22 period] you will pay a fee of as much as \$[insert the amount of
23 the fee in dollars]. You may be eligible for a loan without a
24
25
26

1 prepayment penalty, but you would then pay a higher interest
2 rate and a higher monthly payment.”

3 f. *Concluding Statement.* The Ameriquest Parties’ Sales Personnel
4 shall conclude the conversation with the Potential Borrower by making a
5 statement in substantially the following form:
6

7 “We will be sending you some written disclosures that explain
8 your options regarding a fixed versus adjustable rate loan, paying
9 more or less discount points and a loan with or without a
10 prepayment penalty. If, after reading the information we send
11 you, you wish to make any changes to this loan proposal, please
12 give me a call.”
13

14 g. *Interest Rate Disclosure.* The Ameriquest Parties shall disclose
15 the interest rate being offered, if known, whenever asked by a Potential
16 Borrower.

17 h. *Written or Electronic Disclosures.* The Ameriquest Parties’
18 Sales Personnel shall be instructed that in the event a Potential Borrower’s
19 application is not submitted orally but in a written or electronic document (or
20 submitted through a website or other electronic format), the foregoing oral
21 disclosures, as and if applicable, shall be provided within three (3) days of
22 receipt of the application, in writing by mail or by transmission by the same
23 means used in submitting the application.
24

25 i. *Failure to Make Oral Disclosures.* If an Ameriquest Party
26

1 discovers that a Sales Person has failed to make required oral disclosures to the
2 Potential Borrower, that Ameriquest Party shall take prompt and appropriate
3 disciplinary action, up to and including dismissal of the responsible personnel.
4

5 2. *Written Disclosures.* Within three (3) days after obtaining Loan pricing
6 information from their respective pricing model based on credit information provided
7 by a Potential Borrower and the Potential Borrower agreeing to the submission of a
8 specific Loan proposal for processing (but in no event later than three (3) days after
9 when an appraisal or loan documents have been ordered, whichever occurs first) and
10 without regard to any other disclosure requirements, the Ameriquest Parties shall
11 provide the Potential Borrower a single page disclosure, in writing or electronically,
12 which discloses the terms of the specific Loan proposal being offered to the Potential
13 Borrower, in substantially the form as attached hereto as Exhibit A (hereafter
14 "Disclosure Form"). The initial Disclosure Form may be included with other required
15 disclosures being sent to Potential Borrowers at the same time.
16

17 a. If any one or more Material Changes in Terms occurs,
18 subsequently making the initial Disclosure Form inaccurate, the Ameriquest
19 Parties shall mail, not less than six (6) days before Closing, or deliver or cause
20 to be delivered by courier, facsimile transmission, e-mail or website access so as
21 to be received or accessed by the Potential Borrower at least three (3) days prior
22 to Closing for a Non-Prime Refinance Loan and as soon as reasonably possible
23 but in no event less than one (1) day prior to Closing for any other Loan, a
24
25
26

1 revised Disclosure Form that reflects the Loan terms that will be presented to
2 the Potential Borrower at Closing, including all Material Changes in Terms.

3 b. Notwithstanding the provisions of Subsection V.B.2.a above, an
4 Ameriquest Party need not provide the Potential Borrower a revised Disclosure
5 Form when the only Material Change in Terms is an increase in Discount Points
6 of no more than forty-seven (47) basis points and that increase has been
7 requested by the Potential Borrower to buy down an increase in the interest rate
8 that would not by itself represent a Material Change in Terms.
9

10 c. If the revised Disclosure Form is mailed or delivered by courier
11 or facsimile transmission, it must be accompanied by a cover letter advising the
12 Potential Borrower that changes have been made to the terms of the proposed
13 Loan. If the revised Disclosure Form is delivered by e-mail message, the
14 subject line must contain the following: "IMPORTANT CHANGES to your
15 [THE APPLICABLE AMERIQUEST PARTY] loan proposal." If the revised
16 Disclosure Form is delivered by website access, access to the website must be
17 password protected.
18

19 d. Compliance with the time provisions of this subsection may be
20 proven by satisfactory proof of one of the following:
21

- 22 (1) Timely mailing;
- 23 (2) Timely dispatch by courier or facsimile transmission;
- 24 (3) Confirmation of timely receipt of the e-mail by the
25 Potential Borrower; or
26

1 (4) Confirmation of timely access to the web site by the
2 Potential Borrower.

3 e. The Ameriquest Parties shall instruct the Independent Loan
4 Closer that the final Disclosure Form must be the first document presented to
5 the Potential Borrower at Closing by the Independent Loan Closer, who shall
6 review it with, and have it signed by, the Borrower. In the event an Ameriquest
7 Party employee is conducting the Closing, when permitted under this Consent
8 Judgment, the final Disclosure Form shall be the first document presented to the
9 Potential Borrower at Closing, who shall review it with, and have it signed by,
10 the Borrower.
11

12 3. In communicating with Potential Borrowers, the Ameriquest Parties
13 shall not represent that their respective interest rate or terms are "better," "lower" than,
14 or "competitive" with those of other mortgage lenders, or use words of similar import,
15 unless such representations are in fact true.
16

17 4. The Ameriquest Parties shall not misrepresent the adjustable rate feature
18 of any Adjustable Rate Mortgage. For example, the Ameriquest Parties may not:

19 a. State or imply that the interest rate on the Loan will not, or is
20 unlikely to, adjust in the future;

21 b. State or imply that the interest rate on the Loan can go down
22 (from its initial rate) as well as up, unless that is in fact true;

23 c. State or imply that the initial "fixed" interest rate in an
24 Adjustable Rate Mortgage is the interest rate for the entire term of the Loan;
25
26

1 d. State or imply that the interest rate will go up only if the market
2 rates increase, unless that is, in fact, true.

3 5. When comparing different Loans, the Amerquest Parties shall not state
4 or imply that monthly Loan payments, which include amounts escrowed for payment of
5 property taxes and homeowner's insurance, are comparable with monthly Loan
6 payments that do not include these amounts. The Amerquest Parties shall inform a
7 Potential Borrower whether the monthly payment discussed with or proposed to the
8 Potential Borrower does or does not include any amount escrowed for taxes or
9 insurance, as the case may be.
10

11 6. No Amerquest Party shall represent to a Potential Borrower that it will
12 be able to Refinance the Potential Borrower's proposed Loan at a later date on more
13 favorable terms unless the Loan proposal being made to the Potential Borrower
14 provides that the Amerquest Party is contractually bound to Refinance the Potential
15 Borrower's proposed Loan at the later date on more favorable terms.
16

17 7. The Amerquest Parties shall not misrepresent to any Borrower or
18 Potential Borrower the credit rating or credit status of that Borrower or Potential
19 Borrower.
20

21 C. **Same Rate Available.** The Amerquest Parties shall make Loans in accordance
22 with a pricing model that is designed to produce (before the use of any price exception) the
23 same interest rate and number of Discount Points for all Potential Borrowers with the same
24 credit risk characteristics, who are applying for the same Loan, and who are the same with
25 respect to any other characteristic(s) or fact(s) that affect the pricing information generated by
26

1 the pricing model. Nothing herein shall prohibit an Amerquest Party from making individual
2 "price exceptions" wherein the Amerquest Party offers a Potential Borrower a rate that is
3 lower than the rate for which the Potential Borrower otherwise qualifies ("Price Exception").
4 Provided, however, if in any ninety (90) day period the number of Borrowers receiving a Price
5 Exception from an Amerquest Party exceeds thirty percent (30%) of the Loans originated
6 within the period, there shall be a rebuttable presumption that the Amerquest Party has
7 violated the provisions of this Subsection V.C.
8

9 Price Exception does not include the following: (1) a price reduction given to prevent
10 the Loan from becoming a high-cost or covered loan under the Home Ownership and Equity
11 Protection Act (HOEPA), or any similar Washington law, or from violating any Washington
12 law limitation on fees, rates, or other costs; (2) a price override given at or near the time of
13 funding to honor a previous price commitment; or (3) a firm offer of credit to a pre-screened
14 Potential Borrower that is required by the Fair Credit Reporting Act and based upon the pricing
15 model price at the time of the offer but that is not accepted by the Potential Borrower until after
16 the pricing model price has increased.
17

18 **D. Good Faith Estimates (GFE).** The Amerquest Parties shall provide each
19 Loan applicant with a GFE, as required by RESPA. The Amerquest Parties shall not
20 disparage, discredit, or otherwise encourage Potential Borrowers to disregard the GFE. For
21 example, the Amerquest Parties shall not represent to a Potential Borrower that the GFE is
22 incorrect, reflects the worst case scenario, is not the true Loan proposal, or reflects terms that
23 are higher or lower than the actual terms the Potential Borrower will receive.
24
25
26

1 **E. Borrower Benefit Assessment.** The Amerquest Parties shall not enter into any
2 Non-Prime Refinance Loan that does not provide a benefit to the Borrower. The Amerquest
3 Parties must document that each Non-Prime Refinance Loan provides a benefit and maintain
4 such documentation in a readily retrievable format.

5
6 **F. Foreign Language Provisions.** The Amerquest Parties shall continue their
7 current policy of: (a) maintaining a program of testing and certifying appropriate Sales
8 Personnel for fluency in the Spanish language, and (b) translating into Spanish (i) all
9 documents legally required to be translated, (ii) the Disclosure Form, and (iii) any other
10 disclosure documents voluntarily provided to Potential Borrowers under an Amerquest Party's
11 Best Practices. If an Amerquest Party advertises in any language other than English or
12 Spanish, it must adopt and implement a similar policy with respect to consumers who speak the
13 other language.
14

15 **G. Prepayment Penalties.**

16 1. The Amerquest Parties shall reimburse a consumer for any Prepayment
17 Penalty paid by that consumer if the existence of the penalty was not timely and fully
18 disclosed. The Amerquest Parties shall be deemed to have complied with this
19 requirement of full and timely disclosure by the mailing or delivery of the Disclosure
20 Form as provided in Subsection V.B.2 above.
21

22 2. For any Non-Prime Adjustable Rate Mortgage Loan originated one (1)
23 year or later after the Effective Date that has a Prepayment Penalty, the term of the
24 Prepayment Penalty may not exceed six (6) months beyond the fixed rate term of the
25 Loan. For a period of five (5) years after the Effective Date, the Amerquest Parties
26

1 shall, with respect to such Loans, limit the interest rate adjustment during the
2 Prepayment Penalty term to not more than two (2) percentage points.

3 3. The Ameriquist Parties shall not make false, misleading or deceptive
4 representations regarding a Prepayment Penalty provision. For example:
5

6 a. Whenever an Ameriquist Party orally represents that a Potential
7 Borrower can Refinance at a later date, that Ameriquist Party must also
8 simultaneously advise the Potential Borrower of any obligation to pay a
9 Prepayment Penalty.

10 b. The Ameriquist Parties shall not promise or represent to a
11 Potential Borrower that the Ameriquist Parties will waive a Prepayment Penalty
12 at some future date, unless that promise is contemporaneously communicated in
13 writing and is included as a term in the Loan made to the Potential Borrower.
14

15 c. The Ameriquist Parties shall not refer to a Prepayment Penalty
16 as a "Prepayment Privilege," a "Prepayment Benefit," a "Prepayment
17 Opportunity," or use any similar term that tends to mislead a Potential Borrower
18 regarding the obligation to pay a penalty.

19 d. The Ameriquist Parties shall not state, infer or imply that the
20 circumstances that would trigger a Prepayment Penalty may not or will not
21 occur; provided, however, that the Ameriquist Parties may inform a Potential
22 Borrower of the facts regarding when a Prepayment Penalty included in a Loan
23 proposal does and does not have to be paid according to its terms.
24
25
26

1 4. The Ameriquest Parties shall continue their current practice of not
2 providing their employees with any monetary incentive or other compensation for
3 including a Prepayment Penalty provision in a Loan.

4 **H. Repeat Refinancings.**

5 1. No Ameriquest Party may solicit Borrowers with existing Non-Prime
6 Loans for Refinancing within twenty-four (24) months of the Loan Closing date unless
7 it:

8 a. Receives a request for a pay-off statement from the Borrower or
9 by someone authorized by the Borrower;

10 b. Is contacted by a Borrower who expressly inquires about
11 Refinancing; or

12 c. Otherwise has a good faith belief, supported by objective
13 evidence, that the Borrower is considering Refinancing.

14 2. Any proposed Refinancing of a Borrower's Non-Prime Refinance Loan
15 must provide a benefit pursuant to Section V.E above.

16 3. No Ameriquest Party employee may offer, give or receive compensation
17 to or from a fellow employee, including employees of the Portfolio Retention Centers,
18 in connection with Refinancing a Borrower within twenty-four (24) months of the
19 Closing date of an existing Loan; provided, however, this restriction shall not apply to
20 payments made under an Ameriquest Party's then existing compensation policy.

21 **I. Independent Loan Closers.**

1 1. *Use of Independent Loan Closers.* The Ameriquest Parties shall use
2 an Independent Loan Closer for all of their Non-Prime Loan Closings.

3 2. *Written Instructions and Whistleblower Agreement.* The Ameriquest
4 Parties shall provide each Independent Loan Closer with written instructions and
5 procedures, which the Independent Loan Closer shall be required to follow at Closings.
6 The Ameriquest Parties shall require the Independent Loan Closer to provide a written
7 report both to designated Ameriquest Party senior management, and to the Monitor
8 during the compliance monitoring period, if the Independent Loan Closer discovers
9 unfair, deceptive, misleading or unlawful behavior by any Ameriquest Party employee
10 in connection with any Loan. If an Ameriquest Party learns that an Independent Loan
11 Closer failed to report such misconduct, the Ameriquest Party shall take disciplinary
12 action against the Independent Loan Closer, including temporary or permanent removal
13 from the list of approved Independent Loan Closers. The Ameriquest Parties may not
14 retaliate against an Independent Loan Closer for reporting misconduct.
15

16 3. Independent Loan Closers shall be instructed by the Ameriquest Parties
17 to explain fully the Closing process and Loan documents to Potential Borrowers and to
18 answer all questions from Potential Borrowers to the best of the Independent Loan
19 Closer's ability, unless the Independent Loan Closer is prohibited by law or
20 professional standards from doing so. Further, Independent Loan Closers shall be
21 instructed not to pressure or rush Potential Borrowers at Closing or encourage them to
22 close by suggesting Potential Borrowers may use the rescission period either to read
23 Loan documents or to address questions or objections raised at Closing.
24
25
26

1 4. Employees of Ameriquest Parties may attend Non-Prime Loan Closings
2 only if requested by a Potential Borrower. Ameriquest Party employees attending a
3 Closing may not pressure or rush Potential Borrowers, encourage them to close by
4 suggesting they may use the rescission period either to read Loan documents or to
5 address questions or objections raised at Closing, or in any way obstruct the ability of
6 the Independent Loan Closer to perform his or her duties. The Independent Loan
7 Closer shall be required to report any violation of this Subsection V.I.4 by any Sales
8 Personnel to designated persons in the appropriate regional or headquarters office of the
9 applicable Ameriquest Party. Persons designated may not be Sales Personnel.
10

11 5. Notwithstanding the foregoing, Ameriquest employees may conduct and
12 attend Closings of Loans that are not Non-Prime Loans.
13

14 **J. Closings.**

15 1. Before Closing a Loan, the Ameriquest Parties shall ensure that (a) the
16 Potential Borrower has satisfied all credit Underwriting requirements; (b) an Appraisal
17 or AVM has been submitted and evaluated (if required); and (c) standard title-related
18 information has been received and reviewed.
19

20 2. The Ameriquest Parties may Close a Loan subject to satisfaction of
21 standard industry contingencies such as execution and receipt of state-specific
22 documents (e.g., New York and New Jersey same-name affidavits, Texas election not
23 to rescind forms, receipt of pay stubs for proof of employment, credit report
24 explanation letters, use of proceeds letters and hazard insurance loss payee
25 endorsements).
26

1 3. If an Ameriquest Party schedules a Closing before satisfying the
2 requirements set forth above in Subsection V.J.1, it may not represent, suggest or imply
3 to a Potential Borrower that a Loan has been or will be approved, unless and until these
4 Closing requirements are met. If an Ameriquest Party communicates with a Potential
5 Borrower to schedule a Closing before the Closing requirements have been met, it must
6 clearly inform the Potential Borrower that the Loan has not yet been approved, and that
7 Closing is contingent upon resolution of all outstanding issues.
8

9 **K. Loan Funding.** The Ameriquest Parties must fully and unconditionally
10 disburse the proceeds of all Refinance Loans to the Borrower, settlement agent, or other
11 creditors as reflected in the settlement statement on the first business day after the expiration of
12 any rescission period provided for by law or internal Best Practices; provided, however, that
13 the Ameriquest Parties will not be deemed to have violated this requirement where: (1) Closing
14 contingencies as set forth in Subsection V.J.2 have not been satisfied; (2) an Ameriquest Party
15 is prevented from fully disbursing the proceeds because the wire transfer is delayed (by no
16 more than one (1) day) due to the volume of other scheduled Closings; or (3) by other causes
17 beyond an Ameriquest Party's reasonable control and occurring without its fault or negligence,
18 including, Acts of God, floods, fires, government restrictions, wars, strikes and insurrections.
19

20 If an Ameriquest Party fails, for reasons other than those described above, to timely
21 disburse the Refinance Loan proceeds, it shall reimburse any resulting interest, late fees, or
22 other charges incurred by the Borrower, and fully cooperate in assisting the Borrower in
23 removing any adverse credit report information arising from the non-timely payment.
24
25
26

1 Notwithstanding the foregoing, no Ameriquest Party shall be required to disburse the proceeds
2 of any Loan until it is reasonably satisfied the Borrower has not rescinded the Loan transaction.

3 **L. Appraisals.**

4 1. *Conducting Appraisals.* The Ameriquest Parties shall take reasonable
5 steps to ensure all Appraisals are accurate, that appraisers do not inflate property values
6 and that no employee of an Ameriquest Party attempts to influence the development,
7 reporting, result or review of any Appraisal or otherwise interferes with an appraiser's
8 professional duty to perform the Appraisal impartially, objectively and independently.

9 2. *Removal of Branch from Appraiser Selection.* The Ameriquest Parties
10 shall implement a system to ensure that Appraisals are ordered as part of an automated,
11 centralized process apart from the branch sales offices. Sales Personnel may not select
12 appraisers.
13

14 The Ameriquest Parties shall inform all appraisers currently on their approved
15 or accepted lists that they are no longer dependent upon the branch offices for
16 Appraisal assignments, that only the Appraisal Department can remove them from a
17 panel, and that they are to ignore, and report immediately to the Appraisal Department,
18 any effort by any Sales Person, including any Mortgage Specialist, Branch Manager,
19 Area Sales Manager, or Regional Sales Manager to influence appraised value in any
20 way.
21

22 Similarly, the Ameriquest Parties shall instruct Sales Personnel they are not to
23 engage in any communications with any appraiser regarding the substantive content of
24 the Appraisal report or the final appraised value, or to attempt to influence the results of
25
26

1 the Appraisal in any way and, if they are found to have done so, they will be subject to
2 immediate disciplinary action, up to and including dismissal.

3 3. *Automated Selection of Ranked Appraisers Required.* A panel of
4 qualified, approved appraisers shall be created for each State. When a new Loan file is
5 opened, the automated system will assign the Appraisal to an appraiser on the
6 appropriate panel using an algorithmic system designed to limit choice or selection
7 from the discretion of Ameriquest Party employees. This algorithmic system shall be
8 created and maintained by the Appraisal Department and may involve ranking
9 appraisers on the basis of legitimate and relevant factors, including:
10

11 a. The appraiser's familiarity with the geographic locale of the
12 subject property and the type of property to be appraised;

13 b. The number of Appraisals the appraiser is capable of performing
14 within a given time period;

15 c. The appraiser's record with respect to responsiveness and
16 timeliness;

17 d. The status of the appraiser's license; and

18 e. Whether, at the time of the Appraisal request, the appraiser has
19 prior Appraisals under going pre- or post-funding review or investor due
20 diligence review.
21
22

23 In limited cases (but in no event for purposes of a second or subsequent
24 Appraisal), the Appraisal Department may assign Appraisals to appraisers not selected
25 using the algorithmic system, if the consideration of previously unconsidered legitimate
26

1 and relevant factors dictates. In that event, the Appraisal Department shall document
2 the reasons for its departure from the normal selection process and maintain the
3 documentation in a readily retrievable format. In no event, however, shall the
4 willingness or unwillingness of an appraiser to produce a desired value become a factor
5 in the selection of an appraiser.
6

7 4. *Appraiser Panels.*

8 a. *Service Areas.* If an appraiser declines an assignment because
9 the appraiser, in his or her professional judgment, believes the property is
10 outside of the appraiser's professional service area, the Appraisal Department
11 shall assign the Appraisal to another appraiser and may not pressure the
12 declining appraiser to accept the assignment. The Ameriquest Parties shall not
13 punish appraisers, including by reducing future assignments, for declining
14 assignments the appraiser believes are outside the appraiser's professional
15 service area.
16

17 b. *Inclusion on a Panel.* As a prerequisite to inclusion on a panel,
18 an appraiser must be in good standing with his or her State licensing authority.
19 Only persons who are not Sales Personnel may oversee the selection of
20 appraisers on the panel.
21

22 (1) Before being assigned to a panel, all appraisers who
23 currently or in the past have performed Appraisals on behalf of an
24 Ameriquest Party, including staff appraisers, must have their work
25 product audited for quality and compliance by the Appraisal Department
26

1 or by a licensed third party appraiser retained for auditing purposes. The
2 Ameriquet Parties agree to review or have reviewed, for each of these
3 appraisers, the greater of ten (10) Appraisals or fifteen percent (15%) of
4 the total number of Appraisals performed by the appraiser for Refinance
5 Loans submitted for approval during the six (6) months prior to the
6 review. If the total number of Appraisals performed by an appraiser
7 during that period is less than ten (10), then all Appraisals performed by
8 that appraiser during that period shall be reviewed. Whenever possible,
9 Appraisals shall be selected for review from the pool of Appraisals
10 performed by the appraiser on Refinance Loans submitted for approval
11 and previously subject to investor due diligence or pre- or post-funding
12 reviews during the period. To the extent the number of previously
13 reviewed Appraisals is insufficient for this purpose, additional
14 Appraisals shall be selected at random from the remaining previously
15 unreviewed Appraisals in the pool. If the result of this review indicates
16 further evaluation is necessary, the Appraisal Department (or Third
17 Party Reviewer) shall conduct an additional audit of a random sample of
18 fifteen percent (15%) of Appraisals drawn from those performed by the
19 appraiser for Refinance Loans submitted for approval during the year
20 prior to this review. Any Ameriquet Party may use an appraiser who
21 has been placed on a panel by another Ameriquet Party. No
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23
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1 Ameriquest Party may use an appraiser who fails an audit review by any
2 Ameriquest Party.

3 (2) Appraisers who have been previously disciplined by their
4 State licensing authority are not eligible for inclusion on a panel. The
5 foregoing provision shall not apply where the discipline is for reasons
6 not involving dishonesty or appraisal quality. In the unlikely event that
7 a sufficient number of non-disciplined appraisers are not available to
8 serve a particular defined service area, an Ameriquest Party may use an
9 appraiser who has been disciplined previously by his or her State but
10 only if the discipline did not involve allegations of fraud or
11 misrepresentation, the license was not suspended and the last
12 disciplinary action was at least one year prior to the proposed retention
13 date.
14
15

16 5. *Appraiser Independence.* The Ameriquest Parties shall comply with the
17 independence standards set forth in the October 28, 2003, Independent Appraisal and
18 Evaluation Functions statement by the Office of the Comptroller of the Currency,
19 Federal Reserve Board of Governors, Federal Deposit Insurance Corporation, Office of
20 Thrift Supervision and National Credit Union Association, as amended from time to
21 time.
22

23 6. *Communication of Expected Value to Appraiser Prohibited.*

24 a. There shall be no direct communication between Branch
25 Managers or Mortgage Specialists and appraisers except for communications
26

1 initiated by the appraiser in response to which the Manager or Specialist shall
2 immediately refer the appraiser to the appropriate persons in the Appraisal
3 Department.

4 b. In the case of Refinance Loans, no Ameriquest Party employee
5 may identify on the Appraisal order form or communicate by any other means
6 to any individual appraiser or firm either the Loan amount or any other express
7 or implied statement of the anticipated or desired Appraisal value. However,
8 the Borrower's estimated value of the property may be identified on the
9 Appraisal order form but only if accompanied by a statement it is being
10 provided solely to assist the appraiser in determining the relative complexity of
11 the Appraisal and that it is not a target or expected value.
12

13
14 7. *Appraisal Review.* At the same time the completed Appraisal report is
15 delivered (by whatever means) to the Appraisal Department, the report may be
16 forwarded or otherwise made available to the applicable Branch Manager.

17 a. If, for the initial Appraisal only, the Branch Manager has a good
18 faith belief that the Appraisal contains an error or is otherwise professionally
19 deficient, the Branch Manager may submit a written or electronically
20 transmitted request to the Appraisal Department explaining the objection and
21 requesting the appraiser address the specific issue raised. If the Appraisal
22 Department agrees that a good faith basis for the review exists, either on the
23 basis of a request from the Branch Manager or on the basis of a pre-funding
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1 review, the Appraisal Department may request in writing or by electronic
2 transmittal the appraiser do one or more of the following:

- 3 (1) Consider additional appropriate information about the property,
4 including additional comparables;
5 (2) Provide further detail, substantiation, or explanation for the
6 appraiser's valuation; or
7 (3) Correct errors in the Appraisal.
8

9 The Appraisal Department may not request that an appraiser review an
10 Appraisal solely on the grounds that the valuation is not high enough to qualify
11 the Potential Borrower for the proposed Loan and shall not suggest a specific
12 value.
13

14 b. The Amerquest Parties shall document and retain in a readily
15 retrievable format any change in the Appraisal and the reason for the change.

16 8. *Second Appraisals.* If, after the review process set forth in Subsection
17 V.L.7 above has been completed, the Amerquest Party continues to believe the
18 Appraisal is professionally deficient, that Amerquest Party may order a second
19 Appraisal from the next appraiser on the panel. The Amerquest Parties may not order
20 a second Appraisal prior to the completion of this review process; provided, however,
21 that nothing contained herein shall prevent an Amerquest Party from ordering two
22 simultaneous Appraisals where a particular Loan program requires two different
23 Appraisals. The Amerquest Parties may also order a second Appraisal in the following
24 cases: (a) where the appraised value of the property is within ten percent (10%) of the
25
26

1 value necessary to make the proposed Loan, (b) where the Ameriquest Party reasonably
2 believes the property has been damaged or has otherwise declined in value since the
3 first Appraisal, or (c) where the Appraisal has expired before the Loan has been closed.
4 The Ameriquest Parties shall pay the cost of any second Appraisal ordered because the
5 appraised value was within ten percent (10%) of the value necessary to make the
6 proposed Loan. In no event shall the Ameriquest Parties order more than two (2)
7 Appraisals.
8

9 9. *Appraisal Audits.* Each Ameriquest Party shall maintain a record of its
10 Appraisal review and second Appraisal requests, retrievable by branch office, mortgage
11 specialist and by appraiser. This record shall contain the value determined by each
12 Appraisal and the amount of any change in value resulting from the review or second
13 Appraisal. The Ameriquest Parties shall audit an appraiser's work whenever the
14 Appraisal Department requests review of more than a certain percentage of Appraisals
15 performed by the appraiser for Refinance Loans submitted for approval during a twelve
16 (12) month period. For those appraisers with less than ten (10) Appraisals performed
17 during a twelve (12) month period, the Ameriquest Parties shall review the appraiser's
18 work only if the Appraisal Department made two (2) or more review requests during
19 the period.
20
21

22 An Ameriquest Party shall conduct a comprehensive review of its Appraisal
23 review process whenever the number of review requests or the number of second
24 Appraisals by the Ameriquest Party submitted during a twelve (12) month period
25 exceeds a certain percentage of the total of all first Appraisals during the same period.
26

1 The exact percentages to be used to determine whether an Appraisal audit is required
2 will be established by agreement between the Ameriquest Parties and the Compliance
3 Committee no later than twelve (12) months after the Effective Date.

4 10. *Discipline/Mandatory Reporting.* If an Ameriquest Party has a
5 reasonable basis to believe an appraiser is violating applicable laws, or is otherwise
6 engaging in unethical or unprofessional conduct, that Ameriquest Party shall refer the
7 matter to the applicable state appraiser regulatory agency, if any. Similarly, if an
8 Ameriquest Party learns that one of its employees or agents involved in the Loan
9 production process has attempted to influence the Appraisal valuation process in any
10 manner, it shall immediately discipline the offending person, up to and including
11 dismissal.
12

13 11. *Appraisal Monitoring.* The Appraisal Department shall review twenty
14 percent (20%) of all Appraisals for Refinance Loans submitted for approval (which
15 review may be pre- or post-funding) as part of its existing internal quality control
16 procedures. Review appraisers must be independent of Loan sales and shall be
17 assigned to review Appraisals from no more than ten (10) specific states within the
18 same geographic region.
19

20 12. *Copies of Appraisals to Borrowers.* A complete copy of the Appraisal
21 (or the AVM report if that was used for determining the value of the property) must be
22 provided to the Borrower. If more than one Appraisal (or AVM report) is completed,
23 copies of all Appraisals (or AVM reports) must be provided to the Borrower.
24
25
26

1 13. *Appraiser Compensation.* Appraisers must be timely paid for every
2 completed Appraisal regardless of whether the Loan actually closes. The Ameriquest
3 Parties shall not pay additional or bonus compensation to an appraiser for meeting the
4 desired Appraisal value and no Ameriquest Party employee may accept compensation
5 of any kind from an appraiser or Appraisal firm for an Appraisal assignment.
6

7 **M. Stated Income Loans.**

8 1. The Ameriquest Parties shall not:

9 a. Inflate or fabricate, or encourage a Potential Borrower to inflate
10 or fabricate the source or amount of a Potential Borrower's actual income or
11 assets; or

12 b. Sign any document on behalf of a Borrower.
13

14 2. The Ameriquest Parties shall instruct the Independent Loan Closer to
15 review with the Potential Borrower, and require the Potential Borrower to sign, at and
16 as a condition of Closing, a statement certifying the Potential Borrower understands
17 that:

18 a. The Loan has been approved based on the amount of income
19 reported by the Potential Borrower;

20 b. The amount of income reported by the Potential Borrower is
21 accurate;
22

23 c. If the Potential Borrower's income is in fact less than the amount
24 set forth in the Loan application, the Potential Borrower understands there is a
25
26

1 significant risk that the Potential Borrower will not be able to afford the Loan
2 and may lose their home through foreclosure or be forced into bankruptcy; and

3 d. Any false statements may subject the Potential Borrower to
4 criminal penalties.

5
6 3. The Amerquest Parties shall maintain a record of those applications that
7 are originally submitted as full document or limited document (also called Fast Trac)
8 Loans that are subsequently approved as Stated Income Loans.

9 4. The Underwriting guidelines employed by the Amerquest Parties shall
10 require the amount of stated income be reasonable for the occupation and experience
11 claimed.

12 5. If a Stated Income Loan is based upon self-employment or a home-
13 based business, the Amerquest Parties shall request evidence of the existence of the
14 business.
15

16 N. **Employee Compensation Programs.** The compensation system employed by
17 an Amerquest Party may not provide incentives that encourage its employees: (1) to include a
18 Prepayment Penalty provision in a Loan, (2) to quote a Potential Borrower an interest rate
19 inconsistent with the Same Rate Available provision of this Consent Judgment, or (3) to
20 otherwise increase compensation based on Loan fees or Closing costs.

21
22 O. **Quotas.** The Amerquest Parties may not require its employees to complete an
23 unreasonable minimum number of Loan applications or Loan Closings per month or other time
24 period where the result is that employees violate any provision of this Consent Judgment or the
25 law. No branch, regional or area sales manager may establish a quota system separate from
26

1 that established by an Ameriquest Party; provided, however, nothing in this Consent Judgment
2 shall prohibit regional, area or branch managers from conducting reasonable sales or incentive
3 contests.

4 **P. Whistleblower Policies and Procedures.** The Ameriquest Parties shall adopt
5 written policies and procedures to facilitate reporting of suspected improper conduct by
6 Ameriquest Party employees. Each Ameriquest Party shall provide a copy of these policies
7 and procedures, including the name, address and telephone number of a manager designated by
8 that Ameriquest Party to receive reports of suspected improper conduct, to all current
9 employees and all newly hired employees at the time of their employment. These policies and
10 procedures shall include provisions to:
11

- 12 1. Encourage the reporting of suspected improper conduct;
- 13 2. Take reasonable steps to preserve the anonymity of the whistleblower to
14 the maximum extent practical;
- 15 3. Investigate the allegations of suspected improper conduct and report the
16 results of that investigation to senior management; and
- 17 4. Protect the whistleblower from retaliation.

18 **Q. Employee Training.**

- 19 1. Ameriquest Party branch employees shall complete a training course
20 appropriate to the duties and responsibilities of each employee, which shall include:
21 a. A discussion of the Ameriquest Party's obligations under this
22 Consent Judgment and a written summary of the Consent Judgment provided to
23 each trainee;

1 b. A discussion of the purpose and general prohibitions of state
2 unfair or deceptive acts or practices statutes as they relate to secured real estate
3 mortgage lending.

4 2. Newly hired Sales Personnel shall complete a training course which
5 shall include, in addition to the elements described above, basic training in mortgage
6 lending and in ethical sales practices.

7 3. The General Counsel of ACCCH shall discuss with each of ACCCH's
8 and the Amerquest Parties' officers and directors their respective general duties and
9 responsibilities as they relate to the real estate secured mortgage lending activities of
10 ACCCH or the Amerquest Party with which they are associated and provide each of
11 them with a written summary of this Consent Judgment.

12 4. Each employee required to complete the training courses referred to in
13 Subsections V.Q.1-2 above, and each officer and director of ACCCH and each
14 Amerquest Party shall execute a form, which shall be maintained in a readily
15 retrievable format by ACCCH or the applicable Amerquest Party, acknowledging:
16 17

18 a. Completion of the training or discussion with the ACCCH
19 Counsel, as the case may be;

20 b. They have received, read and understand the Amerquest Party's
21 obligations under this Consent Judgment as set forth in the above-referenced
22 written summary;
23

1 c. They understand that violations of applicable state and federal
2 laws may subject them to individual liability and judicial or administrative
3 sanction; and

4 d. They understand that violations of applicable state and federal
5 laws may subject the Amerquest Party to liability and judicial or administrative
6 sanction.
7

8 **R. No Coordination with Debt Collectors.** Neither the Amerquest Parties nor its
9 employees may compensate Debt Collectors for providing referrals nor may the Amerquest
10 Parties or its employees work in concert with Debt Collectors to pressure a Potential Borrower
11 to obtain a Loan from an Amerquest Party. Nothing in this Subsection V.R shall prohibit the
12 Amerquest Parties from purchasing bulk mailing lists from Debt Collectors or receiving
13 uncompensated referrals from Debt Collectors, whether or not solicited.
14

15 **S. Excepted Issues.** This Consent Judgment does not resolve issues raised in
16 an examination by the Department of Financial Institutions regarding junior lien loans
17 originated between January 1, 2001 and September 30, 2003.

18 **VI. SETTLEMENT ADMINISTRATION**

19 **A. State Settlement Administration and Compliance Committee.** Within
20 fifteen (15) days of the Effective Date, the Settling States shall designate a State
21 Administration and Compliance Committee (the "Compliance Committee"). The Compliance
22 Committee shall serve as the Settling States' representative in the administration of this
23 Consent Judgment and the monitoring of compliance with it by ACCCH and the Amerquest
24 Parties.
25
26

1 **B. Claims Process.** Subject to the provisions of this Consent Judgment pertaining
2 to Sub-Fund A, each Settling State shall determine the procedures to provide notice and
3 distribute restitution to its eligible Borrowers.

4 **C. Procedures for Administration of the Settlement.**

5 1. Within ninety (90) days of the Effective Date, the Ameriquet Parties, in
6 consultation with the Compliance Committee, shall choose and retain an Administrator
7 ("the Administrator") to administer the distribution of restitution payments under this
8 Consent Judgment. The Administrator shall be deemed appointed and the contract
9 approved unless within fifteen (15) days of receipt of the proposed contract identifying
10 the proposed Administrator, more than one-third (1/3) of the number of the Settling
11 States object to the appointment.

12 2. Subject to the limitations of Section IV above, the State shall determine
13 the criteria, procedures and manner of allocation and distribution of restitution to the
14 eligible Borrowers in Washington State and may direct the Administrator with respect
15 to these matters.

16 3. ACCCH or the Ameriquet Parties shall pay to the Settlement Fund an
17 amount sufficient to pay the Administrator's reasonable fees and expenses, including
18 attorneys' fees and costs of litigation, if any, related to maintaining the confidentiality
19 of customer and proprietary information; provided, however, that in no event shall the
20 total of fees, expenses and costs of administration exceed Seven Million Five Hundred
21 Thousand Dollars (\$7,500,000). From time to time, as the Settlement Fund incurs
22 administrative costs, it shall render an invoice of the reasonable costs incurred to
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1 ACCCH or the Amerquest Parties and ACCCH or the Amerquest Parties shall, within
2 thirty (30) days of receipt, transfer that amount to the Settlement Fund for payment to
3 the Administrator. Any unexpended portion of this amount at the termination of the
4 administration of this Consent Judgment shall revert to ACCCH or the Amerquest
5 Parties.
6

7 4. The Amerquest Parties shall provide to the Administrator all
8 information reasonably necessary for the administration of this Consent Judgment,
9 within a reasonable time not to exceed thirty (30) days after receipt of the request for
10 information. The Amerquest Parties shall be ordered to provide this information under
11 15 U.S.C. § 6802(e) (1)(A), (5) and (8) of the Gramm-Leach-Bliley Act. Information
12 pertaining to individual eligible Borrowers, including names and other identifying
13 information may be provided to the Settling States but only if:
14

15 a. The information is used solely for the purpose of contacting
16 eligible Borrowers concerning the award of restitution under the Consent
17 Judgment;
18

19 b. The information consists solely of identifying information about
20 eligible Borrowers who have failed to respond to two or more written notices
21 about the restitution offer; and
22

23 c. Any personal identifying information related to a Borrower
24 provided to the State shall be considered non-public, confidential data not
25 subject to disclosure under RCW 42.17.
26

D. Warranties. The Amerquest Parties shall warrant to the Settling States at the

1 time of supplying information to the Administrator that the information is complete and
2 accurate. If the Ameriquest Parties supply information that is incomplete or inaccurate and
3 that results in an eligible Borrower receiving no restitution or less restitution than that
4 Borrower otherwise would have been entitled to receive under the Settling State's restitution
5 plan if complete and accurate information had been provided, the Ameriquest Parties shall pay
6 the difference between the restitution received by the Borrower, if any, and the amount that
7 should have been paid had complete and accurate information been provided. The Ameriquest
8 Parties and the Settling States mutually warrant to the other that the individuals executing this
9 Consent Judgment are duly authorized to do so and that, as a result of their execution, this
10 Consent Judgment shall be enforceable against any party.
11

12
13 **E. Onsite Inspections.** The Administrator shall permit reasonable onsite
14 inspection by the Settling States on the premises of the Administrator to monitor
15 administration of this Consent Judgment.

16 **F. Taxes.** Income taxes, if any, on income earned by the Administrator on funds
17 held temporarily by the Administrator pending distribution as restitution shall be paid out of
18 the income earned by those funds.
19

20 **VII. COMPLIANCE MONITORING**

21 **A. Implementation Timeline.** The Ameriquest Parties shall implement the
22 changes required by this Consent Judgment as soon as reasonably feasible but not later than
23 March 15, 2007.

24 **B. Ameriquest Internal Monitoring.** No later than ninety (90) days after the
25 Effective Date, the Ameriquest Parties shall implement a program of internal monitoring to
26

1 insure its compliance with this Consent Judgment. This program shall include, at a minimum,
2 periodic on-site visitation of branch offices, and a Mystery Shopping program (except for
3 AMC), all designed to test the Ameriquest Parties' employees' compliance with this Consent
4 Judgment and the Ameriquest Parties' policies and procedures regarding the Loan origination
5 and funding process.
6

7 **C. Customer Satisfaction Monitoring in Welcome Calls.** The Ameriquest
8 Parties will attempt to contact, by telephone, each Borrower as his or her Loan is transferred to
9 Loan servicing. During such calls, Loan servicing personnel will review the Borrower's Loan
10 terms with Borrowers and assess their overall satisfaction with the Loan origination and
11 funding process. When material deficiencies or problems with the Loan origination or funding
12 process are identified, the matter will be promptly referred to a complaint resolution unit.
13

14 **D. Appointment of an Independent Monitor.** The Compliance Committee and
15 the Ameriquest Parties shall agree on the appointment of an independent Monitor (hereafter the
16 "Monitor") to oversee compliance with the provisions of this Consent Judgment by the
17 Ameriquest Parties. In the event the parties fail to reach agreement on a Monitor within ninety
18 (90) days after the Effective Date, the Compliance Committee shall appoint a Monitor.
19

20 Within thirty (30) days after the appointment of the Monitor, the Compliance
21 Committee and the Ameriquest Parties shall agree with the Monitor on a proposed work plan
22 and contract, which shall include all reasonable and necessary costs of the Monitor. If the
23 Monitor, the Compliance Committee and the Ameriquest Parties fail to reach agreement within
24 that time, the Compliance Committee shall determine a fair and reasonable work plan and
25 contract in consultation with the Ameriquest Parties and the Monitor.
26

1 In the event of any dispute arising over the Monitor's performance or the
2 reasonableness of the Monitor's costs and fees, either an Amerquest Party or the Monitor may
3 request the Compliance Committee arbitrate the dispute. In such event, the determination of
4 the Compliance Committee shall be final.

5
6 **E. Costs of the Monitor.** ACCCH or AMQ shall pay all reasonable and necessary
7 costs of the Monitor. Reasonable and necessary costs shall be limited to those set out in the
8 Monitor Contract, but in no event shall they exceed Two Million Dollars (\$2,000,000) per
9 calendar year. The Amerquest Parties and the Compliance Committee may agree to the
10 performance of additional necessary work by the Monitor in an amount not to exceed One
11 Million Five Hundred Thousand Dollars (\$1,500,000) for the entire Monitoring period.
12 Agreement for any additional work shall not be unreasonably withheld.

13
14 **F. Powers of the Monitor.**

15 1. The Monitor shall have broad discretion to review the Amerquest
16 Parties' operations to ensure that each of them complies with the terms of this Consent
17 Judgment. The Monitor shall have all powers reasonable and necessary to efficiently
18 and effectively discharge its responsibilities under this Consent Judgment.

19 2. The Amerquest Parties shall provide the Monitor access to all
20 documents necessary to permit the Monitor to fulfill its duties in a manner, format and
21 time frame convenient to the Monitor. Similarly, the Amerquest Parties shall provide
22 the Monitor with reasonable access to their employees as the Monitor reasonably
23 determines necessary to fulfill its duties under this Consent Judgment. The Amerquest
24 Parties shall make its employees available for interview, either telephonic or in-person,
25
26

1 within seven (7) business days of the Monitor's request. Any customer or proprietary
2 information provided to the Monitor shall remain the sole property of the Ameriquist
3 Parties and shall be treated as confidential information, subject to the provisions of
4 Subsections VII.H and IX.F.

5
6 3. For Loan sampling purposes, the Monitor shall request the number of
7 Loans needed for a ninety-five percent (95%) confidence level, with an error tolerance
8 of plus or minus five percent (5%).

9 4. The Ameriquist Parties shall provide the Monitor with private
10 workspace and access to a photocopier whenever the Monitor makes inspections of the
11 Ameriquist Parties' documents, files and other materials.

12
13 **G. Oversight and Compliance.** The Monitor shall issue a report (hereafter
14 "Report") to the Compliance Committee for the periods ending December 31, 2006; June 30,
15 2007; December 31, 2007; December 31, 2008; December 31, 2009; and December 31, 2010.
16 Each report is due three (3) months after the close of the period covered by the Report. A copy
17 of the Report shall be submitted simultaneously to undersigned counsel for the Ameriquist
18 Parties. The Report shall include:

19 1. The Monitor's evaluation of the Ameriquist Parties' compliance with
20 this Consent Judgment; and

21 2. The factual basis for the Monitor's conclusions.

22
23 The Monitor shall confer with the Ameriquist Parties and the Compliance Committee
24 prior to issuing each Report.

25 **H. Use of the Monitor's Reports.** The Monitor's Reports and testimony may be
26

1 used by the State, ACCCH or the Ameriquet Parties in any court hearing, trial or other
2 proceeding relating to this action, and the Reports shall be admissible into evidence if there is
3 an alleged violation of this Consent Judgment. The Monitor's Report and testimony with
4 respect to any particular alleged violation shall not be admissible or used in any such
5 proceeding by the State if the Ameriquet Parties have cured the alleged violation to the
6 reasonable satisfaction of the States within a reasonable time, which shall be no fewer than
7 thirty (30) days and no more than ninety (90) days after receipt of the report. Provided,
8 however, that the Ameriquet Parties shall not be afforded an opportunity to cure for the
9 purpose of preventing the State from using the Monitor's Report and testimony when the
10 violation of the same injunctive provision is found to have occurred in over ten percent (10%)
11 of the Loan transactions reviewed by the Monitor in Washington State in more than one
12 Report. Subject to the provisions of RCW 42.17, the Monitor's Reports shall not be disclosed
13 to any private party without fifteen (15) days prior notice to the Ameriquet Parties, to permit
14 the Ameriquet Parties adequate opportunity to object to their disclosure. The Ameriquet
15 Parties' remedy against the State for any violation of this fifteen (15) day prior notice
16 requirement is limited to seeking return of the documents from the private party.
17
18

19 Nothing in this Consent Judgment limits the right of the State to conduct investigations
20 or examinations independent of the work of the Monitor.
21

22 **I. Retention of Documents.** The Ameriquet Parties shall generate, retain and
23 make readily available to the State for inspection, upon reasonable notice and without the
24 necessity of a subpoena or other legal process, all material records and documents reasonably
25 necessary to document compliance with this Consent Judgment. The Ameriquet Parties shall
26

1 maintain these records and documents for a minimum of five (5) years after the Monitor's final
2 Report.

3 VIII. RELEASES

4 A. Release from Borrowers. Each Borrower who receives a payment from the
5 Settlement Fund shall first execute the following release (which shall be provided to Borrowers
6 in both English and Spanish):
7

8 "We' and 'our' mean the Borrowers under the Loan account number(s) listed above.
9 If there is only one Borrower, these terms refer to that single Borrower. The 'Amerquest
10 Parties' are Amerquest Mortgage Company, Town and Country Credit Corporation,
11 Amerquest Mortgage Services, Inc., formerly known as Bedford Home Loans, ACC Capital
12 Holdings Corporation and their respective (i) predecessors, past, present and future direct and
13 indirect parents, owners, subsidiaries, affiliated and other related persons or entities of any kind
14 (be they corporations, partnerships, trusts, individuals), including the successors and assigns of
15 any of the foregoing, and (ii) all past, present and future owners, employees, officers, agents,
16 directors, insurers, and any other representatives of all the foregoing, including, for natural
17 persons, both in their official and individual capacities.
18

19 By our signatures(s) below we acknowledge that we have read the following release
20 and are bound by its terms. In consideration for the restitution payment we are to receive, we
21 release the Amerquest Parties from all civil claims, causes of action, any other right to obtain
22 any type of monetary damages (including punitive damages), expenses, attorneys' and other
23 fees, rescission, restitution or any other remedies of whatever kind at law or in equity, in
24 contract, in tort (including, but not limited to, personal injury and emotional distress), arising
25
26

1 under any source whatsoever, including any statute, regulation, rule, or common law, whether
2 in a civil, administrative, arbitral or other judicial or non-judicial proceeding, whether known
3 or unknown, and whether or not alleged, threatened or asserted by us or by any other person or
4 entity on our behalf, including any currently pending or future purported or certified class
5 action in which we are now or may hereafter become a class members, that arise from or are
6 related to the following lending practices engaged in by the Ameriquist Parties, during the
7 period from January 1, 1999 through December 31, 2005, in connection with the Loan account
8 numbers listed above:
9

10 All representations, misrepresentations, disclosures or any other acts, events, facts,
11 transactions, occurrences, omissions or conduct, whether oral, written or otherwise, by the
12 Ameriquist Parties, arising out of, in connection with or relating to any of the following:
13

14 1. Loan types and terms, including discount points, interest rates,
15 origination-related fees, monthly payment amounts, terms of adjustable rate and fixed
16 rate mortgages and prepayment penalties.

17 2. Written disclosures, including the Good Faith Estimate, other documents
18 required to be provided to a Potential Borrower by any law or otherwise provided by an
19 Ameriquist Party.

20 3. The Borrower benefits of obtaining a loan from an Ameriquist Party or
21 from a repeat refinancing with an Ameriquist Party.

22 4. Coordination with debt collectors.

23 5. The timely completion of the underwriting functions and funding of a
24 loan.
25
26

1 6. Closing of a loan.

2 7. Appraisals.

3 8. Stated income loans.

4 9. Disclosures to non-English speaking Borrowers and Potential
5 Borrowers.

6
7 Notwithstanding this release, we may affirmatively or defensively assert any claim or
8 defense that we have with respect to my loan with an Amerquest Party in response to a
9 judicial or threatened non-judicial foreclosure, including those related to the lending practices
10 listed in this release.”

11 In those States with statutory or common law provisions requiring specific language to
12 effectively waive known or unknown claims, the language of the release from the Borrower set
13 forth above shall be modified to include the specific language required by the statutory or
14 common law provisions.
15

16 **B. Release from the State.** The relief to be provided by ACCCH and the
17 Amerquest Parties resolves all civil and administrative investigations and proceedings, if any,
18 including those that are pending or closed, that have been or could have been brought by the
19 States against the Amerquest Parties, as defined in the “Release from Borrowers” set forth
20 above, based upon the Lending Practices with respect to the Covered Transactions. This
21 release is effective so long as restitution and other payments required under the terms of this
22 Consent Judgment are timely made. However, this release by the Settling States does not
23 include a waiver or release of any civil or administrative claims, regulatory matters, or causes
24
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1 of action relating to any practices, acts or omissions by any Ameriquest Party that are not
2 based upon the Lending Practices with respect to the Covered Transactions.

3
4 **IX. MISCELLANEOUS**

5 **A. State Authority.** The relief provided in this Consent Judgment, including all
6 payments by ACCCH or by the Ameriquest Parties, to the Settlement Fund or any accounts
7 established by this Consent Judgment, is in response to and in compliance with the State's
8 authority to regulate ACCCH and the Ameriquest Parties and the State's police powers.

9 **B. Removal of the Administrator or the Monitor.** The Settling States reserve
10 the right to remove and replace the Monitor or Administrator upon approval of two-thirds (2/3)
11 of the number of the Settling States.

12 **C. Compliance with Washington and Federal Law and Prior Agreements.**
13 Nothing in this Consent Judgment shall relieve the Ameriquest Parties of their obligation to
14 comply with applicable Washington or federal law. Where Washington statutes or regulations,
15 letters of understanding or agreements with the Ameriquest Parties, entered into and in force
16 with the Washington Department of Financial Institutions or any other Washington State
17 agency, provide greater consumer protections than the terms or provisions included in this
18 Consent Judgment, the applicable Washington statutes, regulations, letters of understanding or
19 agreements with the Ameriquest Parties shall govern.
20

21 **D. Modification of the Consent Judgment.** This Consent Judgment may be
22 modified only by order of the Court. After making a good faith effort to obtain the
23 concurrence of the other party for the requested relief, which concurrence shall not be
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1 | unreasonably withheld, the party seeking modification may petition the Court for modification
2 | of the terms and conditions of this Consent Judgment.

3 | **E. Limitation on Use of Information from the Ameriquest Parties.** This
4 | Consent Judgment and any information provided by the Ameriquest Parties in the course of
5 | negotiating with the Settling States shall not be used by the State as the basis for the denial,
6 | revocation, suspension or non-renewal of, or imposition of any condition on, any license,
7 | authorization, approval or consent that ACCCH or an Ameriquest Party may now have, or may
8 | hereafter seek to obtain under any Washington State lending, banking, insurance or similar
9 | financial laws or regulations, except as expressly provided in this Consent Judgment.
10 |

11 | **F. Disclosure of Information.** If the State receives a request for documents
12 | provided by an Ameriquest Party relating to the subject matter of this Consent Judgment, the
13 | negotiation of this Consent Judgment, the Monitor's Reports, or information obtained by the
14 | Administrator or Monitor in connection with this Consent Judgment, the State shall comply
15 | with applicable public disclosure laws and promptly provide notice to the Ameriquest Parties
16 | of the request that will afford the Ameriquest Parties the reasonable opportunity to assert that
17 | the documents subject to the request are exempt from disclosure.
18 |

19 | **G. No Disqualification to Do Business.** This Consent Judgment is not intended to
20 | disqualify ACCCH or the Ameriquest Parties from engaging in any business in Washington
21 | State. Further, this Consent Judgment is not intended to have any effect upon the existing
22 | ACCCH or Ameriquest Party licenses in Washington State. This Consent Judgment may not
23 | be used as any basis for the denial, revocation, suspension or non-renewal of, or imposition of
24 | any condition on, any license, authorization, approval or consent that ACCCH or an
25 |
26 |

1 Ameriquest Party may now have or hereafter may seek under the laws of Washington State.

2 **H. Consent Judgment Enforceable Only By the Parties.** This Consent
3 Judgment may only be enforced by the Parties. This Consent Judgment shall not be interpreted
4 to alter the contractual terms of any Loan agreement that any Borrower has with any of the
5 Ameriquest Parties, or constitute a novation of any Loan agreement, except as expressly
6 provided in this Consent Judgment. This Court shall retain jurisdiction to enforce the terms
7 and conditions of this Consent Judgment.
8

9 The State may not bring an action to enforce this Consent Judgment without first
10 notifying ACCCH and the Ameriquest Parties in writing of the State's intent to file and of the
11 alleged violations, specifically citing the applicable provisions of the Consent Judgment on
12 which the proposed action is to be based. This notice shall be no less than fifteen (15) days
13 prior to filing the action.
14

15 **I. Submission to Jurisdiction for Limited Purpose.** ACCCH and the
16 Ameriquest Parties submit to the jurisdiction of this Court for the limited purpose of entering
17 into and enforcing this Consent Judgment only. Any acts, conduct or appearance by ACCCH
18 or the Ameriquest Parties shall not constitute or be construed as a submission to the general
19 jurisdiction of this Court for any purpose whatsoever.
20

21 **J. Conflict with Subsequent Law.** In the event that any law conflicts with any
22 provision of this Consent Judgment, making it impossible for ACCCH or the Ameriquest
23 Parties to comply both with the law and with the provisions of this Consent Judgment, the
24 provisions of the law shall govern.
25
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1 **K. No Third Party Beneficiaries Intended.** This Consent Judgment is not
2 intended to confer upon any person any rights or remedies, including rights as a third party
3 beneficiary.

4 **L. Service of Notices and Process.** Service of notices and process required by
5 this Consent Judgment, or its enforcement shall be served on the following persons, or any
6 person subsequently designated by the parties:
7

8 For ACCCH and the Ameriquest Parties: ACC Capital Holdings Company
9 1100 Town & Country Road
10 Orange, California 92868
11 Attn: Thomas J. Noto, Esquire
12 Executive Vice President and
 General Counsel
 Fax: (714) 479-0406

13 For the Settling States: Iowa Office of the Attorney General
14 Consumer Protection Division
15 Hoover State Office Building
16 Des Moines, Iowa 50319
 Attn: Patrick Madigan
 Assistant Attorney General
 Fax: (515) 281-6771

17 For Washington: Office of the Attorney General
18 David W. Huey
19 Assistant Attorney General
20 1019 Pacific Avenue, 3rd Floor
 P.O. Box 2317
 Tacoma, Washington 98401-2317
 Fax: (253) 597-4408

21 **M. Waiver/Construction.** The failure of any party to exercise any rights under
22 this Consent Judgment shall not be deemed a waiver of any right or any future rights. If any
23 part of this Consent Judgment shall for any reason be found or held invalid or unenforceable by
24 any court of competent jurisdiction, such invalidity or unenforceability shall not affect the
25
26

remainder of this Consent Judgment, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

O. Counterparts. The terms of this Consent Judgment are contractual and not merely recital. This Consent Judgment may be signed in one or more counterparts, each of which shall be deemed an original. Facsimile copies of this Consent Judgment and the signatures hereto may be used with the same force and effect as an original.

ORDER AND JUDGMENT

NOW, THEREFORE, based upon the advice and stipulation of the parties, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, AS FOLLOWS:

A. Upon the agreement of the parties, this Court hereby enters this Consent Judgment.

B. The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Judgment.

C. For the purposes of the relief set forth in this Consent Judgment, the Effective Date shall be deemed to be March 21, 2006.

DONE IN OPEN COURT this 21st day of March, 2006.

Roderick S. Simmons

JUDGE/COURT COMMISSIONER

CONSENT TO JUDGMENT

1
2 1. ACCCH and the Ameriquet Parties agrees to the jurisdiction of the Court as
3 limited in Subsection IX.I of the Consent Judgment, and consents to entry of this Consent
4 Judgment.

5 2. ACCCH and the Ameriquet Parties represent that no promise of any kind or
6 nature whatsoever (other than the terms of this Consent Judgment) was made to induce them to
7 enter into this Consent Judgment, that they have entered into this Consent Judgment
8 voluntarily, and that this Consent Judgment constitutes the entire agreement between ACCCH
9 and the Ameriquet Parties and the State.

10 3. Thomas J. Noto represents that he is the Executive Vice President and General
11 Counsel of ACCCH and that, as such, he has been authorized by ACCCH and each of the
12 Ameriquet Parties to enter into this Consent Judgment for and on behalf of all entities bound
13 by this Consent Judgment.

14 DATED this 17th day of March, 2006.



ACC CAPITAL HOLDINGS CORPORATION,
INC., a Delaware corporation

By Thomas J. Noto
Thomas J. Noto
Its Executive Vice President and General
Counsel

18 State of California)
19) SS.
20 County of Orange)

21 Subscribed and sworn to before me this 17th day of March,
22 2006, by Thomas J. Noto.

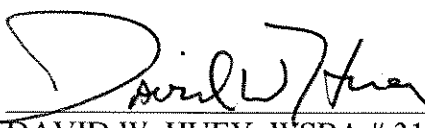
23 Gerri Garagliano
Notary Public

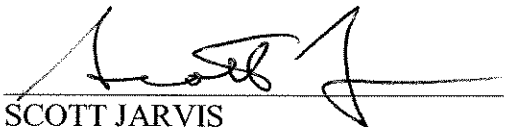
24 My Commission Expires: Oct 31, 2007
25
26

1 Accepted and approved for entry:

Approved as to Form and Substance for
Entry, Notice of Presentation Waived:

2
3
4 ROB MCKENNA
5 Attorney General

6 
7
8 DAVID W. HUEY, WSBA #34380
9 Assistant Attorney General
10 Attorneys for Plaintiff
11 State of Washington

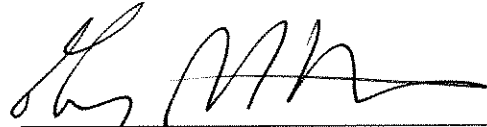
12 
13 SCOTT JARVIS
14 Director
15 Department of Financial Institutions
16 Washington State
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26

W. HENRY SNYDER, WSBA #10821
Kirkpatrick & Lockhart Nicholson
Graham, LLP
Henry W. Oliver Building
535 Smithfield Street
Pittsburgh, PA 15222
Tel: (412) 355-6500
Fax: (412) 355-6501
Attorney for Defendants

1 Accepted and approved for entry:

Approved as to Form and Substance for
Entry, Notice of Presentation Waived:

2
3
4 ROB MCKENNA
5 Attorney General


GEOFFREY M. DAVIS, WSBA #25366
Kirkpatrick & Lockhart Nicholson
Graham, LLP
Four Embarcadero Center, 10th Floor
San Francisco, CA 94111
Tel: (415) 249-1000
Fax: (415) 249-1001
Attorney for Defendants

6
7
8 DAVID W. HUEY, WSBA # 31380
9 Assistant Attorney General
10 Attorneys for Plaintiff
11 State of Washington

12 SCOTT JARVIS
13 Director
14 Department of Financial Institutions
15 Washington State
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IMPORTANT NOTICE OF LOAN TERMS OFFERED BY [COMPANY]

Date of this Notice: _____

The **TOTAL AMOUNT** of your proposed mortgage loan is \$_____.

Your loan amount includes **TOTAL LENDER FEES** of (**BOLD/UNDERLINED**) \$

[For fixed-rate loans] Your **MONTHLY PAYMENTS** of principal and interest will be \$_____ for the life of your loan.

[For ARM loans] Your **MONTHLY PAYMENTS** of principal and interest will be \$_____ for the first _____ [initial adjustment term], after which they may increase as your loan interest rate adjusts.

[As applicable: This amount does **NOT** include the cost of your property taxes and homeowner's insurance]

[For fixed rate loans]

Ameritrust is offering you a loan at _____% **INTEREST**.

[For ARM loans]

[Company] is offering you a loan starting at _____% **INTEREST**.

This loan is a fixed rate loan for [initial adjustment term]. After that the rate may adjust. This means that after the initial period, your interest rate and loan payments can go up every [subsequent adjustment period], depending on market rates. [As applicable: The rate will not ever go lower than _____%.]

This loan has a **PREPAYMENT PENALTY**. This means that if you were to prepay your loan in full within [term], you could pay a charge as high as \$_____.

Ameritrust is charging you \$_____ (**BOLD/UNDERLINED**) in loan **DISCOUNT POINTS**, which lowers the interest rate on your loan. You may choose a loan with fewer discount points and a higher interest rate. Below is a comparison:

Loan as Presented

Loan Amount _____
Current Interest Rate _____
Discount Points _____% \$ _____
Monthly Payment _____

WITH FEWEST DISCOUNT POINTS

Loan Amount _____
New Interest Rate _____
Discount Points _____% \$ _____
Monthly Payment _____

Please contact your Ameritrust mortgage specialist if you have questions about this loan proposal.